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THE CORPORATION TRUST COMPANY AND ASSOCIATED COMPANIES

A unique decision, revolving about the creation of an issue of preferred stock in a corporation by John Wanamaker, which was to *begin to bear interest* six months after his death at the rate of six per cent per annum, has recently been rendered by the Supreme Court of Pennsylvania. "We hazard the observation," remarked the court, "that it is unlikely this certificate has its counterpart in any issue of stock ever made." In construing the effect of the issue of the stock, the court took into consideration not only the terms of the certificate but also the intent of its creator as expressed in the minutes of the meeting authorizing the issue and in a letter of instruction directed to a trustee in whose name the certificate was registered. This opinion, entitled *Warburton v. John Wanamaker Philadelphia et al.*, 196 A. 506, is digested in this issue, page 154.

Raymond Kenyon

President.

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

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Contents for April

Interstate Commerce

Service of Process

(Continued from March Corporation Journal)

Service of process is usually set aside where the activities of a foreign corporation are limited to the sale of goods in interstate commerce, through the solicitation of orders in the foreign state, which are forwarded to another state for approval and shipment. Where, however, the soliciting agent, in addition to soliciting orders in interstate commerce which are approved out of the state and filled there, has authority to carry on other activities, such as the collection of accounts, the adjustment of disputes, etc., service of process upon the corporation in the foreign state has been upheld.

While there appears to be no decision concerned solely with the placing of a foreign corporation's name on the door of an office in a state in which it is not licensed, in practically every case where the presence of the name on a door was pointed to as one of the indications of doing business, the service of process was held to be good. Therefore, if a corporation contemplates opening an office in a foreign state where it is not licensed and placing its name on the door, it may reasonably anticipate that its accompanying activities will be such that service of process upon it within that state will be upheld by the courts there. The same general observation may be made with respect to the placing of an unlicensed foreign corporation's name in the telephone directory. In one instance, however, where a local company, at its own expense, placed a foreign corporation's name in the local telephone directory, the foreign corporation having no office or employee in the state, the foreign corporation was held not to be doing business so as to validate service of process upon it.

If a foreign corporation contemplates maintaining an office in a state in which it is not authorized to do business, it may anticipate that it may properly be required to defend suit in that state if process is served upon it there, as practically all the cases in recent years concerned with the maintenance of an office have held that service of process was valid under circumstances where an office was regularly maintained. In the exceptional instances where an office was maintained in a foreign state, but service of process was not upheld, the corporation was not engaged there in carrying on, for profit, the business for which it was organized, but the operations carried on were limited to such activities as these: the holding of directors' meetings and the keeping of stock books and other books within the state, the maintenance of a transfer office by voting trustees, the maintenance of an office for the sale of the corporation's own stock, or mere incidental assistance, unrelated to selling, performed for offices of the company located elsewhere. *(To be continued.)*

Domestic Corporations

Delaware.

Delaware Supreme Court holds ruling in *Keller et al. v. Wilson & Co., Inc.*, applicable to a corporation created after 1927 amendment of section 26 of the General Corporation Law. The Supreme Court of Delaware in *Keller et al. v. Wilson & Co., Inc.*, 190 A. 115, (The Corporation Journal, December, 1936, page 270), held that, as to a corporation organized *prior* to the 1927 amendment of section 26 of the General Corporation Law, a vested right to accrued dividends may not be destroyed by an amendment of the corporate charter as to dividends accrued up to the time of the adoption of the amendment. The highest court of Delaware has sustained the decree of the Chancellor in *Johnson v. Consolidated Film Industries, Inc.*, 194 A. 844, (The Corporation Journal, November, 1937, page 30), to the effect that, as to a corporation organized *subsequent* to the 1927 amendment of section 26 of the General Corporation Law, the same rule is to be applied.

Section 26, as amended in 1927, authorized the amendment of a certificate of incorporation of a Delaware company "by increasing or decreasing its authorized capital stock or reclassifying the same, by changing the number, par value, designations, preferences, or relative, participating, optional, or other special rights of shares, or the qualifications, limitations or restrictions of such rights." In its opinion, the Delaware Supreme Court pointed out that the question presented was whether the appellant corporation, organized in 1928, "had the power to capitalize, alter or extinguish, as an incident to the proposed reclassification of its capital stock, the right of its preferred shareholders to receive accumulated dividends accrued on the preferred shares through passage of time, but not declared and paid." In holding that the cancellation of accumulated dividends so accrued could not be accomplished by amendment, the court said: "The case is precisely similar to the Keller case except that the corporation was created since the amendment of 1927. It may be said that it has a stronger right to claim the full measure of the power granted by that amendment, but we are unable to discover a difference in principle between the two cases. In either case, as concerns the amendment of 1927, the owner of cumulative preferred shares, was entitled to rely on his contractual right which, as against common shareholders, entitled him to receive at some time the dividends accrued thereon through time until the accomplishment of the reclassification of the shares and the change of their status by the necessary corporate action under the power granted. To that time the right ought to be regarded as a fixed, contractual right, not to be diminished or cancelled against his consent, but to be recognized and protected. The language of the amended section is clear and unambiguous. It authorizes the amendment of charters. There is nothing in the language to suggest that the section, as amended, was intended to have a retrospective operation." *Consolidated Film In-*

dustries, Inc. v. Johnson, Delaware Supreme Court, decided December 17, 1937; opinion received February 19, 1938. Commerce Clearing House Court Decisions Reporting Service Requisition No. 191390. Hugh M. Morris and Alexander Nichols of Wilmington (Meyer H. Lavenstein, of counsel), for appellant. Howard Duane of Wilmington, for appellee.

Stockholders of dissolved corporation held to have right to maintain derivative action on its behalf to conserve and recover its assets, where no receiver or trustee had been appointed. In *Arn et al. v. The Bradshaw Oil & Gas Company et al.,* (The Corporation Journal, December, 1937, page 55), the United States District Court, Northern District of Texas, Amarillo Division, held that a derivative action may not be instituted by stockholders of a defunct corporation, where such an action was instituted by minority stockholders several months after their corporation's charter had been forfeited for its failure to pay its franchise taxes. On appeal, the United States Circuit Court of Appeals, Fifth Circuit, reversed the order of the lower court dismissing the bill, in which it had been alleged that the officers and directors, and others having dominance of the corporation's affairs, had entered into a conspiracy regarding the corporation's property, in order to obtain, and with the result of obtaining, the benefit of it for themselves. The court said: "We think the suit, brought as it was, for the benefit of the corporation, must, under the facts pleaded, be regarded as brought by the corporation and for the protection of its interests in the property in suit. The fact that a receiver or trustee may be appointed in Delaware for the corporation, and that when so appointed he may, acting for the corporation, appear in the suit and prosecute or take control of it, does not, in our opinion, prevent appellants, stockholders, where no receiver or trustee has been appointed, from bringing a suit on behalf of the corporation, to conserve and recover its assets for the benefit of those entitled to them." *Arn et al. v. Bradshaw Oil & Gas Co. et al.,* 93 F. (2d) 728. F. E. Riddle of Tulsa, Oklahoma, for appellants. M. A. Breckinridge of Tulsa, Oklahoma, and Wm. Jarrell Smith of Pampa, Texas, for appellees.

Iowa.

Resolution deferring payment of officers' salaries until death of survivor of two sole officers and stockholders held valid. At a time when two persons owned the entire capital stock of defendant corporation in equal amounts, and when there were salary payments due both, a resolution was passed containing a provision that the salaries then due were not to be payable until the death of the survivor of these two persons. One of these having died, his executor instituted suit to recover salary payments which had accrued. The validity of the resolution being questioned, the Supreme Court of Iowa concluded that it created a binding contract, observing: "In this instance, there was a sufficient consideration for the passage and acceptance of the resolution as it was distinctly a benefit to

the corporation and a detriment or inconvenience to the parties to whom the salaries were due. It was also a benefit to the individuals, the sole stockholders and officers, to be assured of the continuance of the corporation and its corporate business." The suit by the executor was therefore dismissed. *Bankers Trust Co. v. Economy Coal Co. et al.*, 276 N. W. 16. Devitt & Eichhorn of Oskaloosa, for appellant Bankers Trust Co. Stipp, Perry, Bannister & Starzinger of Des Moines, for certain defendants-appellants. Stanley G. Swarzman of Des Moines, for other defendants-appellants. Parrish, Guthrie, Colflesh & O'Brien of Des Moines, for Economy Coal Co. Paul M. Payne of Des Moines, for defendant-appellee John H. Ramsay.

Kentucky.

Injunction granted because of similarity of defendants' trade name to that of plaintiff corporation. Plaintiff company, Artiste Permanent Wave Company, which had over a period of four years employed the trade names "Artiste Beauty Shoppe" and "Artiste Shoppe" brought action to enjoin defendants from using the name "Art Beauty Shoppe" in connection with activities similar to those of plaintiff, carried on in the same building by individual defendants who had been formerly in the employ of plaintiff. The Kentucky Court of Appeals, in reversing a judgment for defendants in the lower court, said: "There is no escape from the conclusion that the words 'Artiste' and 'Art' are so similar as to be calculated to confuse or mislead the public. There are numerous cases where the courts have granted injunctive relief against the use of names less similar than the ones here under consideration." *Artiste Permanent Wave Company v. Hulsman et al.*, Kentucky Court of Appeals, January 28, 1938. Commerce Clearing House Court Decisions Reporting Service Requisition No. 190153.

The compensation of a receiver performing unusual and extraordinary services may be fixed by the chancellor. In reviewing a case where the chancellor had allowed a receiver $25. a month for his services, which had extended over a period of more than two years, to which exception had been taken, the Court of Appeals of Kentucky said: "This is not a case where the receiver sat on certain days and performed merely the usual services incident to his office, but a case where the receiver carried on a particular business and performed unusual and extraordinary services. Where that is the case, we have universally ruled that the statutes (sections 1740 and 396, Kentucky Statutes), fixing the fees of the receiver at $3. for each day he is actually engaged, and requiring a sworn statement as to the number of days he has acted, do not apply, but his compensation is a matter peculiarly within the chancellor's discretion, which of course is subject to review by this court." *Amick's Adm'r. et al. v. Hudson et al.*, 109 S. W. (2d) 1177. Stratton & Stephenson of Pikeville, for appellants. Henry J. Scott of Pikeville, for appellees.

New York.

Reclassification of stock invalidated where effected at meeting called without proper notice. Plaintiffs, preferred stockholders of defendant company, brought this representative stockholders' action to invalidate the action of the corporation in filing a certificate of reclassification and reduction of its capital stock, which provided for the exchange of each share of outstanding preferred stock for one share and one-half share of new common stock, with a view of eliminating a sinking fund and accumulated preferred stock dividends. The Supreme Court of New York, Appellate Division, First Department, did not pass directly upon the validity of the attempted reduction and reclassification, for the reason that it found them to be invalidated because proper notice had not been given to the stockholders. But twelve days' notice of the meeting at which the reclassification was acted upon was given to stockholders. The certificate of incorporation contained a provision, however, that notice to holders of the preferred stock was to be given "at least thirty (30) days prior to any reorganization of the corporation, or reclassification of its capital stock." The court regarded this provision as having been intended to refer to notice of the meeting at which action was to be taken, and, not having been complied with, the proposed reclassification was held ineffective. *Davison et al. v. Parke, Austin & Lipscomb, Inc. et al.*, 299 N. Y. S. 960. Charles Stewart Davison and Frank C. Mebane, Jr., (Frank C. Mebane, Jr., of counsel), of New York City, for plaintiffs. Brodek & Eisner (Louis P. Eisner, of counsel), of New York City, for defendants.

Limitation on declaration of dividends on common stock held not affected by increase in number of common shares. Plaintiffs were preferred stockholders of a corporation whose charter contained a provision "that no dividend or dividends shall be paid upon the common stock of the corporation in any one calendar year in excess of Ten dollars ($10) per share, while any preferred stock is outstanding." The question presented was whether an increase by amendment in the number of shares of common stock from 100,000 to 500,000 would effect a reduction from $10 to $2 as the limit above which dividends on the common stock might not be paid. The Supreme Court, Special Term, New York County, held that the $10 limit would remain operative, as "the plaintiffs bought their stock, knowing that the corporation could, in the method followed, do what was accomplished. There is no fraud or overreaching. The plain intendment was that the common stock, as it stood on the day the dividend was declared, was entitled to $10 a share in any calendar year." *Wagstaff et al. v. Holly Sugar Corporation et al.*, 1. N. Y. S. (2d) 36. Shiland, Hedges & Pelham of New York City, for plaintiffs. Webster & Garside of New York City, for defendant William L. Sweet, Jr. Bleakley, Platt & Walker of New York City, for defendant Gertrude Romm Levy. Appleton, Rice & Perrin of New York City, for defendant Holly Sugar Corporation.

Pennsylvania.

Corporation held to have the same power to issue stock providing for the payment of a certain rate of interest thereon, when earned, as it has to issue ordinary preferred stock. A case of unusual interest, involving the creation of an issue of 10,000 shares of preferred stock which was to *begin to bear interest* six months after the death of John Wanamaker, the individual who brought about the issuance of the stock, was recently handed down by the Supreme Court of Pennsylvania, which opened its opinion with the following statement: "The question here involved is whether complainant is entitled to receive payments at the rate of 6 per cent. per annum on the 10,000 shares of stock of the corporation 'John Wanamaker Philadelphia' held in trust for her, or whether she is entitled to receive such payments only when the directors of the corporation declare the payments as dividends. A majority of the court below decided that payments at the rate named were due to complainant, notwithstanding they had not been declared as dividends. From the decree directing payment to her of the sum of $190,631.16, the corporation appeals."

The court observed that John Wanamaker, owning practically all of the stock of the defendant corporation, which was indebted to him in an amount exceeding $1,000,000, desiring to provide his daughters, of whom complainant was the survivor, with a certain, secured income, concluded to do this by transmuting the million dollar indebtedness of the corporation to him into stock with a fixed annual payment thereon of 6 per cent. in the nature of a charge against the earnings of the corporation. The creation of a single certificate for the 10,000 shares of preferred stock, mentioned above, to effect this purpose followed. In upholding a judgment for the complainant, the court said: "A corporation has the same power to issue stock providing for the payment of a certain rate of interest thereon when earned as it has to issue ordinary preferred stock." In giving effect to the terms of the certificate, the court considered the circumstances surrounding its issuance, such as the minutes of the meeting authorizing the stock issue, the instructions given to the trustee in whose name the certificate was registered and the relations between Mr. Wanamaker and the corporation. *Warburton v. John Wanamaker Philadelphia et al.*, 196 A. 506; Commerce Clearing House Court Decisions Reporting Service Requisition No. 189945. Harry E. Sprogell, Earl G. Harrison and Saul, Ewing, Remick & Saul of Philadelphia, for appellant. Marshall A. Coyne and David J. Smyth of Philadelphia, for appellee. Henry S. Drinker, Jr., and Drinker, Biddle & Reath of Philadelphia, for Fidelity-Philadelphia Trust Co., Trustee.

West Virginia.

A stockholder may not maintain an equity action to enforce his right to inspect the records of the corporation. The Supreme Court

of Appeals of West Virginia dismissed a bill in equity under which it was sought to compel a corporation to permit the inspection of its books and documents, the court concluding this was not a matter of equity jurisdiction and that mandamus rather than injunction was the proper remedy. In the course of its opinion the court said: "In the United States, it is generally held that a stockholder cannot maintain a bill in equity to enforce merely his right to inspect the books or documents of the corporation, whether the right itself be conferred by statute, or by regulations of the company, or exists at common law." *Nolan et al. v. Guardian Coal & Oil Co.*, 194 S. E. 347. W. S. Wysong of Webster Springs and Lively & Lively of Charleston, for appellant.

Foreign Corporations

California-Oregon.

Dissolution of Oregon corporation by proclamation held not to destroy creditors' rights. An Oregon corporation was proclaimed as dissolved by the Governor of that state for failure to file certain reports and pay its license fees, at a time when it owned certain mining property in California. Subsequent to the proclamation, an Oregon judgment obtained against the company was taken into the California courts and the property there sold at a sheriff's sale as a result. The present action was brought to quiet title to the California property, defendants claiming title on the ground that, upon the Governor's proclamation, the Oregon judgment had been rendered nugatory and title to the property in question vested in the defendant stockholders of the company, a contention which had been upheld by the lower court. The District Court of Appeal, Third District, California, however, reversed this judgment, after examining the applicable Oregon law, sections 6717 and 6719, Lord's Oregon Laws, and reached the conclusion that the principal purpose of the sections was to collect corporate taxes and assessments and that the Legislature did not intend to penalize creditors of proclaimed corporations or to destroy any of their rights. It was held that the dissolution of the company by the Governor's proclamation had only the effect of forfeiting its right to carry on business and did not deprive its creditors of their right of action on the judgment in California. *Hibernia Securities Co. v. Morey*, 73 P. (2d) 939. Erwin P. Werner, of Los Angeles, Thomas Maul, of Placerville, and Newlin & Ashburn, George W. Tackabury, Werner & Linder, and Edwin Linder, of Los Angeles, for appellant. James Cole, Henry S. Lyon and Robert E. Roberts, of Placerville, for respondent.

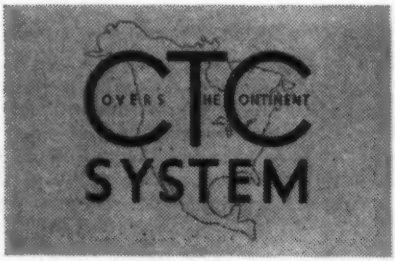
Mississippi.

One who appears in court to quash service of process gives the court jurisdiction as effectually as if he had been legally served with process. An unlicensed foreign corporation, the appellant, after

When a corporation's qualification to do business in any state is completed — is the attorney's work done?

WHEN you have qualified a client as a foreign corporation in any state, should you walk out on its law problems in that state? What taxes it must pay there depends on interpretation of the state's laws. What reports it must file there requires application of the state's laws. How to act in regard to processes served in the state depends on the law involved. Laws, laws, laws! A corporation's need for its lawyer is far from over just because its qualification as a foreign corporation has been completed...

...so thousands of the most experienced cor-



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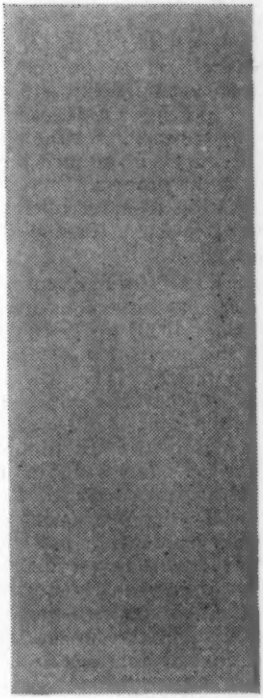

esentation a corporation must have a lawyer.
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has been its policy ever since. But let it not
idealistic effort to make work for lawyers.
is a business of doing for a lawyer those
work makes necessary but that are not law
details that can be done best with business organization and system. We
—if corporations did not have lawyers, there would not long be business for us.
when lawyers are busy and because lawyers are busy. So we do not seek and will
cation of corporations except from each one's own lawyer.

service upon its alleged agent in Mississippi, filed a motion to quash the process on the ground that the person served was not its representative in any capacity that would authorize such service. "The first question presented for decision," said the Supreme Court of Mississippi, Division B, "is whether the motion to quash effectually brought appellant into court so as to obtain jurisdiction of the person." After reviewing the statute, Section 2999, Code of 1930, and the construction placed upon it by the courts of Mississippi, the court remarked that, "by statute and general practice in this state, there is no such thing as a special appearance in our courts and that it is our long-settled practice that, when a party comes in, he must come in entirely or else he must stay away." "If a defendant files a motion to quash a process, although such process may be insufficient within itself to bring a defendant into court, the defendant is brought into court by appearing for the purpose of quashing the process, and thereby the court is given jurisdiction of the person, notwithstanding any defect in the process." *Gridley, Maxon & Co. v. Turner*, 176 So. 733. Suggestion of error overruled, 177 So. 362. R. H. & J. H. Thompson of Jackson, for appellant. Ford & Ford of Pascagoula, for appellee.

A domesticated foreign corporation is subject to attachment. There are special provisions in the Mississippi statutes (Sections 4160-4162, Code 1930) for the domestication of foreign corporations, apart from the provisions governing the usual method of qualifying foreign corporations. The Mississippi Supreme Court, in determining whether a corporation which was domesticated, rather than being qualified in the usual sense, was subject to attachment, observed: "Whatever may be the full import of the domestication statutes, we think it may be safely said that they do not operate to make two separate and distinct corporations. The foreign corporation domesticated here still remains one corporation, and it must, therefore, have its domiciliary residence in one state and not in both. Thus, it seems the more reasonable to ascribe that residence to the original state which above others has visitorial and supervisory powers over it, as well as the final authority to dissolve it." The court reached the conclusion that, in the interest of procedural consistency, it must "hold that for all jurisdictional purposes, state and federal, the domesticated corporation remains still a resident of the state of its original incorporation, and in consequence a nonresident of this state and subject to attachment as such." *Southern Motor Express Company v. Magee Truck Lines, Inc.*, Mississippi Supreme Court, December 13, 1937. Commerce Clearing House Court Decisions Reporting Service Requisition No. 187596; 177 So. 653. W. B. Fontaine of Jackson, for appellant. Robertson & Robertson of Jackson, for appellee.

New York.

Service of process set aside where made upon president of unlicensed foreign corporation who was in state merely to purchase

films. The Supreme Court, Special Term, Kings County, granted a motion to vacate service of a summons and complaint where made upon the president of a New Jersey company having no office in New York and no officer or agent resident in New York, the president having entered the state on a periodical visit to purchase films for his corporation and to make contracts for their purchase and subsequent use by his corporation, which was engaged in the exhibition of motion picture films in New Jersey. *Affiliated Enterprises, Inc. v. Colonial Theatre, Inc.,* * 1 N. Y. S. (2d) 181. John M. Keating of New York City, for plaintiff. Blecheisen & Whelan of New York City, for defendant.

* The full text of this opinion is printed in **The Corporation Tax Service,** New York, page 241.

North Carolina.

Service of process upon agent of unlicensed foreign corporation who was regularly engaged in making collections for goods sold held valid service. Defendant Missouri corporation, not authorized to do business in North Carolina, had an agent residing in the state, designated as a "manager," to whom soliciting agents sent orders accompanied by cash deposits which the manager, upon whom summons had been served, forwarded to the Missouri office of the company. Holding the service valid, the North Carolina Supreme Court indicated that an agent upon whom binding service may be made must be one regularly employed, having some charge or measure of control over the business entrusted to him, and of sufficient character and rank as to afford reasonable assurance that he will communicate to his company the fact that process has been served upon him. Stress was laid upon the fact that defendant's agent in the state was regularly engaged in making collections for the goods sold, this being a distinguishing fact which would sufficiently characterize him as an agent who could properly be served so as to bind his principal. *Mauney v. Lusier's, Inc.,** North Carolina Supreme Court, December 15, 1937. Commerce Clearing House Court Decisions Reporting Service Requisition No. 188981; 194 S. E. 323. Sapp & Sapp of Greensboro, for appellant. King & King of Greensboro, for appellee.

* The full text of this opinion is printed in **The Corporation Tax Service,** North Carolina volume, page 140.

Ontario.

Foreign trust company acting as co-trustee under a mortgage deed of trust held not doing business so as to be required to be registered. The Ontario Supreme Court ruled that where a mortgage on Ontario property was made to two trustees, one of which was a New York bank which was not registered in Ontario as a trust company or licensed as a foreign corporation, the acts of the latter under the mortgage in certifying and supervising securities issued in connec-

tion with it and giving its consent to the doing of certain acts by its co-trustee, did not necessarily make it a trustee or a trust company in Ontario so as to require its registration in Ontario. *Montreal Trust Co. v. Abitibi Power Co.*, (1937) 4 D. L. R. 369. Strachan Johnston, K.C., J. S. D. Tory, Ian S. Johnston, for plaintiff; R. S. Robertson, K.C., E. G. McMillan, K.C., and Peter Wright, for the defendant Abitibi Power & Paper Co., and for Roy Sharvell McPherson, the liquidator of the said company; W. N. Tilley, K.C., Glyn Osler, K.C., and John R. Cartwright, K.C., for the individual defendants.

Wisconsin.

Agent, authorized by contract to canvass a specified territory for a definite period, held properly served as agent for an unlicensed foreign corporation. Service of process was upheld by the Wisconsin Supreme Court where it was made upon an agent of an unlicensed foreign corporation who was authorized under a contract to solicit orders in a specified territory, which he was to canvass thoroughly for one year. In considering the fact that but two sales had been effected by the agent during the first seven months the contract was in effect, at the end of which the agent had been served, the court said: "It does not follow, however, where the agent's commission contract contemplates a continuous course of sales, that actual sales must be made over a considerable period of time before a valid service may be had upon the agent." The fact that the agent had operated under the contract for only a short period and had made only two sales was held not to support the conclusion that an isolated transaction was involved. *Northfield Iron Company v. Murphy, Judge, et al.*,* Wisconsin Supreme Court, January 11, 1938. Commerce Clearing House Court Decisions Reporting Service Requisition No. 189183; 277 N. W. 168. Giles V. Megan of Oconto, for plaintiff. Tom Donoghue of Oconto, for defendant.

* The full text of this opinion is printed in **The Corporation Tax Service**, Wisconsin volume, page 514.

Taxation

Alabama.

Municipal ordinance imposing license tax held void as to corporation engaged in interstate commerce. The complainant, a wholesale grocery company, challenged the validity of a municipal ordinance of respondent city, levying a license tax upon those maintaining places of business outside the city of Roanoke, Alabama, who take or receive orders for the sale of merchandise, to be delivered in that city and who fill such orders by delivering the merchandise in their own vehicles within the city. The complainant company, with its domicile and only place of business in La Grange, Georgia, sent agents to Roanoke, Alabama, to solicit orders for merchandise, which, after being approved in Georgia, were filled by the loading of the mer-

chandise on the corporation's trucks there and by later delivery to the merchants in the Alabama city who had given the orders. The complainant made no sales or deliveries of merchandise, except on orders previously obtained. The Supreme Court of Alabama concluded that the company was engaged exclusively in interstate commerce, and that, as that field of taxation has been pre-empted by the federal Congress, neither the state nor its municipalities can raise revenue by imposing a tax upon interstate commerce. The ordinance, as applied to the business conducted by the complainant, was held to be void. *City of Roanoke v. Stewart Grocery Co.*,* 176 So. 820. Paul J. Hooton of Roanoke, for appellant. D. R. Boyd of Roanoke and Lovejoy & Mayer of La Grange, Ga., for appellee.

* The full text of this opinion is printed in **The Corporation Tax Service**, Alabama volume, page 7697.

Federal.

Where three persons, the sole subscribers to stock of a corporation, entered into voting agreement as stockholders and then sold voting trust certificates, court holds such sale not a transfer of stock subject to Federal stamp tax. Three individuals, as stockholders, constituted themselves to be the trustees under a voting trust which they as stockholders organized, and then sold to those who otherwise would have become stockholders, not shares of stock, but voting trust certificates. The question raised was whether a tax upon the sale of such voting trust certificates, levied by defendant collector, for which a recovery is sought, was a taxable transfer under Title 8 of the Revenue Act of 1926, Sec. 800 et seq., Schedule A-3, 44 Stat. 101. The United States District Court, Eastern District, Pennsylvania, concluded that a recovery should be allowed, holding, in effect, that the contribution of money in consideration of the issue of such voting trust certificates did not constitute a purchase of stock subject to a stamp tax. *Pennroad Corporation v. Ladner, Former Collector of Internal Revenue*, 21 F. Supp. 575. George G. Chandler and Robert T. McCracken of Philadelphia, for plaintiff. Thomas J. Curtin, Asst. U. S. Atty., of Philadelphia, Pa., J. Cullen Ganey, U. S. Atty., of Bethlehem, Pa., and E. F. McMahon, Sp. Asst. to the Atty. General, for defendant.

Club serving luncheons held to be a social club, with its dues subject to tax. It was contended that plaintiff organization was purely a luncheon club and that, observed the court, "could mean that the function of the club is merely to supply food, almost in the nature of a refueling station, rather than a place where people of like taste, like association, like objects, congregate, not for the sole purpose of consuming food." "There have been very moving descriptions of these excellent foods, the succulent steaks and the pluperfect pickled pig knuckles, the excellent lobster and all these various things that have affected our appetites while they were being described, yet that is not the only purpose men go to clubs for. These

fascinating things are all very nice, but they go for companionship and the meeting of kindred souls, and communion between people who have like pleasures, like enterprises." The court concluded that plaintiff was a social club, the dues of which were taxable. *Yondotega Club v. United States,** United States District Court for the Eastern District of Michigan, Southern Division, January 28, 1938. Commerce Clearing House Court Decisions Reporting Service Requisition No. 191896.

*The full text of this opinion is printed in the **Standard Federal Tax Service —1938—¶ 9134.**

Appealed to The Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

FEDERAL. Docket No. 658. *Middle States Petroleum Corporation v. The United States,* 18 F. Supp. 945 and 21 F. Supp. 128. (The Corporation Journal, March, 1938, page 134.) Federal stock transfer tax—corporate reorganization—transfer to voting trustees. **Appeal filed, December 31, 1937. Petition for writ of certiorari to the Court of Claims denied, February 28, 1938.**

GEORGIA. Docket No. 840. *Edgar Brothers Company v. State Revenue Commission of Georgia et al.,* 194 S. E. 505. (The Corporation Journal, March, 1938, page 135.) State income tax on profits from interstate business—foreign corporation. **Appeal filed, March 4, 1938.**

INDIANA. Docket No. 641. *J. D. Adams Manufacturing Company v. Storen et al.,* 7 N. E. (2d) 941. (The Corporation Journal, June, 1937, page 424.) Validity of Indiana Gross Income Tax Law as applied to gross income of an Indiana corporation derived from interstate and foreign commerce. **Appeal filed, December 17, 1937. Probable jurisdiction noted, January 10, 1938. On day call for argument, March 28, 1938.**

NEW YORK. Docket Nos. 809 and 810. *McGoldrick et al. v. National Cash Register Company,* 276 N. Y. 208, 11 N. E. (2d) 881. (The Corporation Journal, February, 1938, page 110.) Interstate commerce—New York City local law imposing sales tax. **Appeal filed, February 19, 1938.**

* Data compiled from CCH **U. S. Supreme Court Service, 1937-1938.**

Regulations and Rulings

CONNECTICUT—The Cigarette Stamp Tax regulations as revised to date are shown in the Connecticut volume of The Corporation Tax (CT) Service on pages 503-31 to 504.

DELAWARE—The 1937 franchise tax, assessed during 1938, is governed in full by the law as amended in 1937. (Opinion of Attorney General, Delaware CT, ¶ 40.3.)

FLORIDA—The Attorney General of Florida in an opinion to the Comptroller has ruled that seasonal merchants who bring their merchandise into the state after January 1 in any year and remove their merchandise after the season should be taxed on the average value of the merchandise over a period of twelve months preceding January 1 of the year in which the assessment is made. (Florida CT, ¶ 29-034.)

GEORGIA—A list of corporate stocks listed on the New York Stock Exchange and the New York Curb Exchange, with their official market values as of January 1, 1931, the effective date of the present Georgia Income Tax Law, is shown in the Georgia volume of The Corporation Tax Service, beginning on page 1903.

IOWA—The Attorney General has ruled that where tangible personal property is purchased by a contractor fulfilling a lump sum contract, the sales or the use tax, whichever is applicable, must be paid upon the purchase of materials used in the fulfillment of the contract, irrespective of the fact that the project may be paid for wholly or in part by State or Federal funds. (Iowa CT, ¶ 7901.)

KANSAS—Regulations relative to the Income Tax Law issued by the Kansas State Tax Commission, as revised, are printed in The Corporation Tax Service, Kansas volume, pages 267 to 267-35, inclusive.

LOUISIANA—A corporation actually operating a store or stores in Louisiana is liable for the payment of the chain store tax, and all stores of a parent corporation and all corporations under the same general management, supervision, ownership or control are taken into account in arriving at the rate of tax per store in Louisiana, under a recent opinion of the Attorney General. (Louisiana CT, ¶ 44-504.)

MICHIGAN—The tax imposed under the Michigan Use Tax Act of 1937 is deductible by the purchaser or consumer for Federal Income tax purposes. (I. T. 3158, I. R. B. 1938-6-9183.) (Michigan CT, ¶ 7935.)

NORTH DAKOTA—The State Tax Commissioner has been advised by the Attorney General that the state unemployment insurance payroll tax is allowable as a deduction in computing the income tax on corporations. (North Dakota CT, ¶ 1522.) The Attorney General of North Dakota has also ruled that the gasoline tax does not apply to the use of gasoline where that use is not upon the public highway. (North Dakota CT, ¶ 7881.)

PENNSYLVANIA—The taxable values of over three thousand stock issues for State Property Tax purposes as of January 1, 1938, approved by the Department of Revenue, are set forth in the Pennsylvania Tax (CT) Service, pages 2855 to 2917, inclusive.

Some Important Matters for April and May

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Notification Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

ALABAMA—Annual Franchise Tax due April 1, but may be paid without penalty until April 30.—Domestic and Foreign Corporations.

ARKANSAS—Income Tax Return and Payment due on or before May 15.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before May 15.—Domestic and Foreign Corporations.

CALIFORNIA—Quarterly Retail Sales Tax Return and Payment due on or before April 15.—Domestic and Foreign Corporations.

COLORADO—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Annual License Tax due on or before May 1.—Domestic and Foreign Corporations.

DELAWARE—Annual Franchise Tax due after April 1 and before July 1.—Domestic Corporations.

DOMINION OF CANADA—Annual Summary due between April 1 and June 1.—Dominion Companies.

Income Tax Return due on or before April 30.—Domestic and Foreign Corporations.

INDIANA—Quarterly Gross Income Tax Return and Payment due on or before April 15.—Domestic and Foreign Corporations.

IOWA—Quarterly Retail Sales Tax Return and Payment due on or before April 20.—Domestic and Foreign Corporations.

KANSAS—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

KENTUCKY—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Return of Withholding at the source due on or before April 15.—Domestic and Foreign Corporations.

LOUISIANA—Income Tax Return due on or before May 15.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before May 15.—Domestic and Foreign Corporations.

MAINE—Annual Franchise Tax Return due on or before June 1.—Domestic Corporations.

MASSACHUSETTS—Excise Tax Return due on or before April 10.—Domestic and Foreign Corporations.

MINNESOTA—Annual Report due between January 1 and April 1.—Foreign Corporations.

MISSOURI—Annual Franchise Tax due or or before May 15 and delinquent after June 1.—Domestic and Foreign Corporations.

Income Tax due on or before June 1.—Domestic and Foreign Corporations.

MONTANA—Annual Statement due within two months from April 1.—Foreign Corporations.

NEBRASKA—Statement to Tax Commissioner due on or before April 15.—Foreign Corporations.

NEW MEXICO—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Franchise Tax due on or before May 1.—Domestic and Foreign Corporations.

NEW YORK—Annual Franchise (Income) Tax Returns (Form 3IT—Article 9A, Tax Law) and payment of one-half of tax due on or before May 15.—Domestic and Foreign Business Corporations.

NORTH DAKOTA—Quarterly Retail Sales Tax Return and Payment due on or before April 20.—Domestic and Foreign Corporations.

PENNSYLVANIA—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

RHODE ISLAND—Semi-Annual Report to Department of Labor due in April and October.—Domestic and Foreign Corporations employing five or more persons in Rhode Island.

TEXAS—Annual Franchise Tax due on or before May 1.—Domestic and Foreign Corporations.

VERMONT—Income (Franchise) Tax Return due on or before April 15.—Domestic and Foreign Corporations.

VIRGINIA—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before April 15.—Domestic and Foreign Corporations.

WEST VIRGINIA—Annual License Tax Report due in April.—Foreign Corporations.

Quarterly Gross Income Tax Return and Payment due on or before April 30.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets and forms, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York, N. Y.

We've Always Got Along This Way. This is a 24-page pamphlet giving brief digests of cases in various states in which corporation officials who had thought they were getting along very well with corporate representation by a business employe suddenly found themselves penalized in unusual and often embarrassing ways: such as one company that had to pay its employe-representative's alimony.

What! *We* Need a Transfer Agent? Nonsense! The foregoing is the title of a pamphlet which describes in detail, with many illustrations, the exact steps through which a stock certificate goes in being transferred from one owner to another by an experienced transfer agent—purpose being to enable any corporation official to judge more accurately whether or not his own company should use the services of a transfer agent.

Judgment by Default. Gives the gist of Michigan Supreme Court case of Rarden v. Baker and similar cases in other states, showing how corporations qualified as foreign in any states and utilizing their business employes as corporate representatives are sometimes left defenseless in personal damage and other suits.

A Corporation's Achilles Heel. Containing the complete text of the opinion of the Supreme Court of the United States in State of Washington ex rel. Bond & Goodwin & Tucker, Inc. v. Superior Court, State of Washington, of the Supreme Court of New Mexico in Silva v. Crombie & Co., and of the Supreme Court of Michigan in Rarden v. R. D. Baker Co.—three decisions of great significance to attorneys of corporations qualified in one or more states.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation, completely revised to reflect the changes made by the amendments of 1937.

The High Cost of Whistles for Corporations. Benjamin Franklin's classic, "The Whistle," here is shown, by the decisions in actual court cases, to have a very pointed application to some of the policies of some business corporations of our own day. A sixteen-page pamphlet for both laymen and lawyers.

What Constitutes Doing Business. (Revised to September 1, 1937.) A 168-page book containing brief digests of decisions selected from those in the various states, as indicating what is construed in each state as "doing business." The digests are arranged by state, but a Table of Cases and a Topical Index makes them accessible also by either case name or topic. There is also a section containing citations to cases on the question of doing business such as to make the company subject to service of process in the state.